March 27, 1996

THE RSAC PROCESS

The Railroad Safety Advisory Committee (RSAC) shall be governed by the following statement of purpose:

> The Committee shall seek agreement on the facts and data underlying any real or perceived safety problems; identify cost effective solutions based on the agreed-upon facts; and identify regulatory options where necessary to implement those solutions. In determining whether regulations are necessary, the Committee shall take into account section 1 (a) of Executive Order 12866 (Regulatory Planning and Review), which provides as follows:

>> *The *Regulatory Philosophy.* Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

> The resultant rules must be reasonable, clear, effective, and enforceable; impose as small a burden as is practicable; and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

The RSAC will provide advice and recommendations to the Federal Railroad Administration (FRA) regarding the development of the railroad safety regulatory program, including issuance of new regulations, review and revision of existing regulations, and identification of non-regulatory alternatives for improvement of railroad safety. Of course, the RSAC's own resource limitations will not permit FRA to refer every safety regulatory task to RSAC. Moreover, on occasion, the need to address a safety issue in a very expedited way will preclude such a referral.

It is FRA's policy to utilize consensus recommendations of the RSAC as the basis of proposed and final agency action, whenever possible, consistent with applicable law, including guidance from the President. In considering whether to adopt RSAC recommendations, the Administrator weighs the interests of the public at large and the ability of the agency to administer, and, if necessary, to enforce, any requirements that would result from final agency action.

FRA will consult with the RSAC on a periodic basis regarding the development of its regulatory program, advising the RSAC of emerging issues, statutory requirements, and other identified needs. It is the intent of the FRA to consider the views of RSAC members in determining regulatory priorities.

The RSAC provides advice and recommendations on specific tasks assigned to it by FRA. Whenever possible, FRA will consult with the RSAC prior to assigning a task to the committee. As each task is assigned, the RSAC may elect to accept or reject the task, or to recommend that the task be restructured. When a task is assigned, FRA sets a target date for the presentation of RSAC's recommendations to the Administrator. The target date is based on consultation with RSAC and may be adjusted by FRA based on further consultation. FRA may withdraw a task from the RSAC at any time. FRA will provide the RSAC an explanation when it does so.

General RSAC Structure
The RSAC structure consists of three levels: (1) the RSAC itself (the full committee); (2) working groups responsible for developing recommendations on one or more specific tasks assigned to RSAC; and (3) task forces that develop data and recommended actions with respect to elements of tasks assigned to working groups . The RSAC is appointed and chaired by FRA. At each level, membership shall reflect parity between representatives of railroad labor and management interests. Of course, in addition to railroad labor and management, representatives of other interests directly affected by FRA's safety regulatory program will sit on the RSAC and, as appropriate, on working groups and task forces.

Voting by proxy is permitted at any of the three levels. The RSAC will devise a very simple form to record proxies. However, the RSAC, working group, or task force can choose to waive the use of a written proxy as long as the proxy is noted in the records of the meeting. Proxy voting is essential to accommodate the busy schedules of those who will serve at the various levels without jeopardizing representation of their interests.

Working Group Formation
 The RSAC will establish a working group to undertake each program development task (e.g., rulemaking or issue to be examined for possible rulemaking), and that working group will be dissolved when the task is completed (normally following issuance of a final rule or

decision not to institute rulemaking). A working group may be assigned more than one task if tasks are clearly related, but standing working groups are not employed. The working group functions as staff to the RSAC and is comprised of individual representatives from RSAC member organizations who may, but need not be, RSAC members themselves.

The Chairperson, after consultation with the committee, determines the appropriate structure for a working group. Each working group will be comprised of only those members directly interested in the task and will be limited to the smallest number necessary to accomplish the assigned task. In selecting members for the working group, strong preference will be given to persons with technical expertise in the subject matter. A fair balance of interests actually implicated by a particular task is sought in the selection of the working group membership. The Chairperson will provide an opportunity for any stakeholder with a direct and legitimate interest in a particular task to serve on a working group.

FRA Representation on the Working Group
Typically, a minimum of three FRA representatives (a program person, an attorney, and an economist) are assigned to each working group. These representatives serve as the liaison between the working group and the agency. As members of the working group, the FRA representatives are responsible for presenting the agency's concerns and suggestions on the topic tasked. Each working group is supported by necessary FRA staff (e.g., program specialist or research staff member). The FRA representatives collaborate with the internal team established to support the working group and ensure unity of agency thought and action.

Initial Working Group Meeting
During the initial working group meeting, the Chairperson will brief the working group on the task to be completed, the available resources for completion of the task, and the timetable for completion of the task. The working group sets a schedule of milestones for completion of the task, makes specific assignments within the group or establishes a task force, sets internal goals, and selects a format for the presentation of its recommendations to the RSAC.

Task Force Formation
The working group may establish a task force on any task. This may be especially useful where significant fact finding and data development are necessary, where the working group has more than one task at a time, and/or where the overall task assigned by FRA can be efficiently divided into sub-tasks. Task force members may be members of RSAC organizations or other knowledgeable persons sponsored by RSAC organizations. The task force reports to the working group that established it. The task force must adopt its report by full consensus, i.e., unanimously. When full consensus cannot be reached, the task force notifies the working group of this fact.

Working Group Deliberations
The working group meets as necessary, assigning responsibility for specific tasks and formulating the structure of their recommendations to the RSAC.   If the working group has established a task force, the working group is responsible for ensuring that it meets the goal set for reporting to the working group. For each task assigned, the working group addresses the relevant facts, defines the safety problem presented, develops a range of options and decides upon a recommended option.   When necessary to reach agreement on the relevant facts, the working group is expected to visit appropriate sites on railroads to observe the facts directly.

Working Group Reaches Consensus
The working group will operate by full consensus, with all participants supporting the recommendations of the group, after having had ample opportunity to persuade others of the rightness of their preferred positions. If all participants can *live with and support* the final working group recommendations, then full consensus is achieved.   In the event the working group is unable to reach unanimous consensus on all issues related to a particular task, it reports to the RSAC on those issues and recommendations, if any, for which the working group was unanimous in its consensus.

Working Group Presentation to the RSAC
Once the working group has reached consensus about its recommendations to the full RSAC, the RSAC Chairperson is notified. The RSAC receives the working group report and considers whether to adopt the recommendations set forth in the report.   Unless the Chairperson decides otherwise, the working group presents its recommendations during a public meeting of the RSAC. The Chairperson places the working group presentation on the agenda for the next RSAC meeting. Public notice of the presentation of the working group's recommendations to the RSAC is published in the *Federal Register,* indicating the date, time and location for the meeting, as well as the public location where copies of the working group's recommendations may be reviewed in advance. When the RSAC meeting is convened, the working group spokesperson presents its recommendations to the RSAC, responding to any questions regarding the factual basis of the recommendations, the options reviewed, and considerations bearing on those options.

Based on the circumstances, however, the Chairperson may decide the RSAC need not consider the recommendations during a formal meeting but may, instead, distribute the recommendations in writing. This method is likely to be most useful in the case of relatively minor regulatory matters on which extended deliberation is not likely. In employing this procedure, the Chairperson will provide RSAC members the opportunity to request docketing of the working group report for consideration at the next meeting of the RSAC. When this method is used, public notice is published in the *Federal Register* indicating the public

location where copies of the working group's recommendations may be reviewed and pointing out that no formal meeting is planned to discuss them.

RSAC Consideration of Working Group's Recommendations
Having received the full consensus recommendations of the working group, the RSAC has three options: (1) by full consensus (unanimous vote), accept the working group's recommendations and forward them to the Administrator without change; (2) by majority consensus, accept the working group's recommendations and forward them, without change, to the Administrator along with any non-consensus views offered by any non-concurring voting members of RSAC that were not represented on the working group; or (3) by full consensus (unanimous vote) return the working group's recommendations to the working group for further consideration of specific issues. With regard to a particular task, the third option is available only once.

In the unlikely event that there is no majority consensus to send the working group's recommendations to the Administrator, but no unanimous consensus to return the task to the working group, the Chairperson shall report to the Administrator that no RSAC recommendations will be made on that task. The same is true where, on the second time before the RSAC, there is no majority consensus to send the working group's recommendations to the Administrator (return to the working group no longer being an option). In that event, nothing precludes any RSAC member from submitting the working group's recommendations to the FRA docket on any related rulemaking and noting that the RSAC did not adopt the recommendations.

The RSAC considers the working group's recommendations in their entirety, seeking consensus for approval of the recommendations as a whole. For the recommendation to be submitted to FRA, the voting members of RSAC must approve the working group's recommendation without change. The full RSAC is not the appropriate level at which to write or rewrite detailed recommendations. That is the job of the working groups. Members of the RSAC consider whether they can *live with and support* the recommendations embodied in the working group report, taken as a whole. FRA employs its resources and energy to encourage and facilitate the achievement of consensus.

At this level, consensus need not be unanimous. If a majority of the voting members achieve consensus on the working group's recommendations, those recommendations become the RSAC's recommendations to the Administrator. If any voting RSAC member that was not represented on the working group is not in favor of the consensus recommendations, that member may send the Administrator its own non-consensus views along with the consensus recommendations.

In the event the RSAC is unable to reach majority consensus on approval of the working group report and adoption of its recommendations, the RSAC refers the matter back to the working group for further consideration, but only by a unanimous vote. In doing so, the RSAC identifies the specific issues that should be reconsidered. The RSAC should send the recommendations concerning a particular task back to the working group only for major, material issues. The working group then re-examines its report through a full consensus process, making any possible modifications responsive to the concerns identified by the RSAC. In doing so, the working group may make any other modifications that are necessary to bring the entire report into conformity. Upon re-submission to the RSAC, the report of the working group is considered in the same manner as before, except that remanding the task to the working group is no longer an option.

Presentation of the RSAC's Recommendations to the Administrator
Once the RSAC reaches consensus, the Chairperson transmits the RSAC's recommendations to the Administrator. If, with regard to a particular task, there was no full consensus at the task force or working group level, or no majority consensus at the RSAC level, the RSAC reports the absence of consensus to the Administrator. Of course, in the absence of consensus recommendations, FRA will simply determine the best course of action on a particular issue without the benefit of the RSAC's advice.

Proposed and Final Actions
To the maximum extent practicable, FRA utilizes the RSAC to provide consensus recommendations with respect both to proposed and final agency action. Of course, except for those limited circumstances where an opportunity for prior comment is unnecessary, FRA provides to the general public in the *Federal Register* notice of its regulatory proposals, an opportunity to comment in writing, and an opportunity for an oral presentation (hearing). Following issuance of a proposed rule, FRA requests the RSAC to assist FRA in considering comments received. With respect to either a proposed or final rule, FRA may schedule one or more meetings of the RSAC during which information and views are received from other interested persons.

Railroad Safety Advisory Committee (RSAC)
Tasks - Accepted as of January 28, 2000

Task 96-1   **Revision of Freight Power Brake Regulations -** Formally withdrawn 6/97. FRA is proceeding with issuance of NPRM reflective of what FRA has learned through the collaborative process.

Task 96-2   **Revision of Track Safety Standards -** To promote the safe movement of trains.

Task 96-3   **Railroad Communications -** To recommend revisions to the Radio Standards and Procedure and consider communications capability required to support emergency preparedness functions, including emergency preparedness plans for rail passenger service.

Task 96-4   **Tourist, Excursion, Scenic and Historic Service**
To ensure appropriate applicability of FRA regulations to tourist, excursion and historic railroads on and off the general rail system.

Task 96-5   **Revision of Steam-Powered Locomotive Inspection Standards**
To promote the safe operation of tourist and historic rail operations.

Task 96-6   **Revision of Qualification and Certification of Locomotive Engineer Regulations -** To promote railroad safety by improving the regulations based on additional knowledge and experience gained since the original effective date.

Task 96-7   **Safety Standards for Track Motor Vehicles and Self Propelled Roadway Equipment -** To promote the safe operation of track motor vehicles and self propelled roadway equipment.

Task 96-8   **Locomotive Crashworthiness and Working Conditions Planning Task**
To evaluate the need for action responsive to recommendations contained in the Report to Congress entitled *Locomotive Crashworthiness & Working Conditions.*

Task 97-1   **Locomotive Crashworthiness -** To promote the safe operation of trains and the survivability of locomotive crews where train incidents do occur.

Task 97-2   **Locomotive Cab Working Conditions -** To safeguard the health of locomotive crews and promote the safe operation of trains.

Task 97-3   **Revision of Event Recorder Requirements -** To enhance rail safety through appropriate revision and/or addition to existing event recorder requirements to improve accident investigation, reconstruction, and analysis

methodologies. To consider, and as appropriate act upon, National Transportation Safety Board recommendation for locomotive cab voice recorders.

Task 97-4
Task 97-5
Task 97-6 — **Positive Train Control Systems -** To facilitate understanding of current Positive Train Control (PTC) technologies, definitions, and capabilities. To address issues regarding the feasibility of implementing fully integrated PTC systems. To facilitate implementation of software based signal and operating systems through consideration of revisions to the Rules, Standards and Instructions to address processor-based technology and communication-based operating architectures.

Task 97-7 — **Definition of Reportable "Train Accident" -** To evaluate the current concept of a reportable "train accident" to determine whether clarification of the means used by railroads to estimate railroad property damage could improve the consistency of reporting.

Task 2000-1 — **Railroad Operating Practices - Blue Signal Protection of Workmen -** To promote the protection of persons who work on, under, or between rolling equipment and the safety of persons applying, removing or inspecting rear end marking devices.

The following tasks were postponed for consideration at the January 28, 2000 Meeting:

Task 2000-2 — **Northeast Corridor -** To promote the safe operation of passenger and freight rail service on the Northeast Corridor.

Task 2000-3 — *(Planning Task)* **Training and Qualification of Safety-Critical Personnel -** To evaluate the adequacy of existing FRA and industry requirements and programs to train, qualify, and document the qualifications of employees and other personnel who perform safety-critical functions, recommending any additional actions that should be taken through the RSAC.